

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BLACKWATER SECURITY CONSULTING,  
LLC, a Delaware limited liability company; and  
Blackwater Lodge and Training Center, Inc.,  
a Delaware corporation,

Plaintiffs,

v.

Civil Action  
No. 2:05-cv-06020-PBT

WESTCHESTER SURPLUS LINES  
INSURANCE COMPANY, a Georgia  
Corporation; EVANSTON INSURANCE  
COMPANY, an Illinois corporation;  
CONTINENTAL INSURANCE COMPANY,  
a Pennsylvania corporation; :  
and LIBERTY INSURANCE UNDERWRITERS,  
a Massachusetts corporation,

Defendants

**DECLARATION OF FRANCES MARES**

I, Frances Mares, being duly sworn, hereby make this affidavit based on my personal knowledge under penalty of perjury.

1. I am a citizen and resident of Illinois, am over the age of 18 years old, and am competent to render the sworn statements herein. I am a Claim Director who manages claims for the Continental Insurance Company ("Continental") and a number of other insurance companies who operate under the trade name "CNA." I have personal knowledge of the facts in this affidavit, based upon my work on the relevant claims and upon the information contained in the documents in the file and otherwise relevant to this matter. I make this affidavit in support of Continental's Opposition and, in the alternative, Rule 56(f) Motion, to Blackwater's Motion for Partial Summary Judgment.
2. As soon as Continental learned of the deaths of Stephen Helvenston, Mike Teague, Jerko Zovko, and Wesley Batalona (the "Decedents"), it immediately worked with Blackwater to obtain benefits under the Defense Base Act for the survivors of the Decedents.
3. Pursuant to the policy issued by Continental to Blackwater, Policy No. DBA 22 390 1731, Continental has paid full DBA benefits to each of the survivors of the Decedents from April 2004 to present, and continuing.

4. Attachment A is a true and correct copy of an e-mail exchange in on April 1, 2004 between Donna Sprags (of CNA) and Blackwater, in which Ms. Sprags notes that CNA provides certain benefits to Blackwater "employees" pursuant to the Defense Base Act.

5. Blackwater completed forms necessary to start the payment of DBA benefits to the Decedents' survivors. For example, Attachment B is a true and correct copy of a cover letter from Blackwater to Ms. Sprags, attaching LS-202s (Employer's First Report of Injury or Occupational Illness) for the Decedents (Attachment B includes a true and correct copy of the LS-202 for Scott Helvenston). The LS-202s must be completed by the employer, who must provide to the DOL information regarding the "employees" who may qualify for DBA benefits. In the attached LS-202, Blackwater represented to the Department of Labor that "Deceased employee was attacked by a mob of insurgents in Fallujah." (emphasis added.)

6. During the course of Continental's and Blackwater's efforts to obtain DBA benefits for the Decedents in 2004, Blackwater repeatedly referred to them as "employees," never referred to them as "independent contractors," and never told Continental they were anything but employees.

7. Throughout the pendency of the DBA claims, which have become complicated by dint of the claimants' tardy effort to withdraw their DBA claims, Continental has retained and fully paid for legal counsel to represent both Blackwater and Continental.

8. Soon after *Nordan v. Blackwater*, No. 05-CV-000173 (NC Super. Ct.) (the "*Nordan* Action") was filed, Continental approved Blackwater's selection of Smith Anderson as its North Carolina counsel for the *Nordan* Action. Since that time, Continental has paid every invoice submitted by Smith Anderson with no reductions. Through June 2007, Continental and Westchester Surplus Lines Insurance Company have paid a total of \$1,069,892.03 to Smith Anderson. In addition to this total, the invoices submitted by Smith Anderson indicate that it has utilized approximately a half-dozen attorneys in relation to the *Nordan* Action. Smith Anderson has been extensively involved in the litigation.

9. I have reviewed the invoices provided by Blackwater reflecting work conducted by some of the other counsel retained by Blackwater. Excluding Smith Anderson, those invoices indicate that at least 120 attorneys and paralegals have worked on this matter.

Frances Mares  
Frances Mares

Dated : 8/10/07

Message

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**Sprags,Donna L.**

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**Attachment**  
**A**

**From:** Sprags,Donna L.  
**Sent:** Thursday, April 01, 2004 1:05 PM  
**To:** 'Danielle Morrison'  
**Cc:** scapace@theprincegroup.com; Patrick Toohey; Carol Confer; Ana Bundy  
**Subject:** RE: PLEASE HELP!

Hi Danielle,

CNA will reimburse Blackwater for the expenses incurred in returning the employees to Dover. From Dover we will assist the family and/or Blackwater to their final resting place. Normally once the employees are in Dover a funeral home is needed to transport them to their final resting place. So, the families need to contact the funeral they would like to use.

CNA will pay for the transportation from Dover and will need the following in order to reimburse Blackwater and/or the families. Please note the maximum allowed for funeral expenses is \$3,000 per employee.

1. Invoice for the return of the employees to Dover.
2. Invoice for transportation from Dover to their home.
3. Copy of the funeral invoice
4. Name, address and phone number for the family member CNA should contact

Thank you

Donna Sprags  
 CNA Global Claims  
 PH: 312-822-1925  
 Fax: 312-817-7252  
 E-Mail: donna.sprags@cna.com

-----Original Message-----

**From:** Danielle Morrison [mailto:[dmorrison@blackwaterusa.com](mailto:dmorrison@blackwaterusa.com)]  
**Sent:** Thursday, April 01, 2004 11:46 AM  
**To:** Sprags,Donna L.  
**Cc:** scapace@theprincegroup.com; Patrick Toohey; Carol Confer; Ana Bundy  
**Subject:** RE: PLEASE HELP!

Dear Ms. Sprags,

Thank you for contacting me. I have already forwarded the letter of guarantee. I have attached it for you information. Can we submit a reimbursement invoice to CNA to recuperated expenses?

I will be contacting you shortly to discuss everything we need to do on this end to ensure this process is seamless for the families of our fallen co-workers. We are working with Dover right now but would appreciate your assistance in arranging getting the deceased from Dover to the ultimate resting place. Blackwater will provide escorts from Dover to the ultimate location.

Message

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Could you please provide me with a list of information CNA will need from the families in order to get all this accomplished?

Thank you for all you help!  
Danielle Morrison  
252-435-0019

-----Original Message-----

**From:** Sprags,Donna L. [mailto:[Donna.Sprags@cna.com](mailto:Donna.Sprags@cna.com)]  
**Sent:** Thursday, April 01, 2004 10:14 AM  
**To:** Danielle Morrison  
**Subject:** FW: PLEASE HELP!

Hi Danielle,

CNA Global provides Defense Base Act coverage to the Blackwater employees that were killed in Iraq. Steve Capace asked me to contact you regarding a Statement of Reimbursement that the U S Government requires in order to bring the remains back to the U S.

CNA Global will reimburse the U S Government for the cost of bringing the remains of the 4 employees back to the U S. Please advise who we should contact or e-mail with the guarantee.

Thank you

Donna Sprags  
CNA Global Claims  
PH: 312-822-1925  
Fax: 312-817-7252  
E-Mail: [donna.sprags@cna.com](mailto:donna.sprags@cna.com)

-----Original Message-----

**From:** Steve Capace [mailto:[scapace@theprincegroup.com](mailto:scapace@theprincegroup.com)]  
**Sent:** Thursday, April 01, 2004 8:54 AM  
**To:** Sprags,Donna L.  
**Subject:** Fw: PLEASE HELP!

----- Original Message -----

**From:** Danielle Morrison  
**To:** [scapace@theprincegroup.com](mailto:scapace@theprincegroup.com) ; Patrick Toohey  
**Sent:** Thursday, April 01, 2004 9:48 AM  
**Subject:** FW: PLEASE HELP!

Message

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FYI.

-----Original Message-----

**From:** justin mcquown [<mailto:justinm2772@yahoo.com>]  
**Sent:** Thursday, April 01, 2004 7:49 AM  
**To:** Danielle Morrison  
**Subject:** Re: PLEASE HELP!

Danielle, Ana,

I will be the prime contact for the return of the remains of our guys.

Right now they will be in Kuwait this evening. I have made contact with the mortuary services officer at Kuwait and they will be held there until we receive the Statement of Reimbursement from the home office.

It basically needs to outline that Blackwater USA will reimburse the United States Government for the Repatriation fees for each individual.

I am hoping to have Chris Berman act as escort for all the remains until Dover. After Dover, he is willing to transport Helvenstons Remains to HOR. John and Kathy Potter will be in Arriving in Dover on Thurs/Fri but they will still need coordination on that side.

Thanks for all your assistance,  
Justin

*Danielle Morrison <dmorrison@blackwaterusa.com> wrote:*

Hello Guys!!!

We are in the process of notifying the family members and they want to know when they will be repatriated. Do you guys have an itinerary or ETA?

We know you are overwhelmed and doing everything you can to keep things together there, just let us know when get some information.

Thanks guys!!!

WE LOVE YOU!

Danielle / Ana

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CNA  
Attn: Donna Sprags  
CNA Plaza 32S  
Chicago, IL 60685

April 7, 2004

Dear Ms. Sprags,

Enclosed are the Form LS-202 required to begin the processes on; Wes Batalona, Mike Teague, Jerry Zovko, and Scott Helvenston.

Please do not hesitate to contact me if you have any questions or require additional information.

Sincerely,

Danielle Morrison  
Blackwater USA  
V: 252-435-0019

**Employer's First Report of Injury  
or Occupational Illness**  
(See Instructions on reverse - Leave Items 1 and 2 blank)

**U.S. Department of Labor**

Employment Standards Administration  
Office of Workers' Compensation Programs

OMB No. 1215-0031

1. OWCP No.	2. Carrier's No.	3. Date and Time of Accident
	Policy # DBA223901731	Mo. Day Yr. Hour 03 31 2004 10:00 AM PM
4. Name of Injured/Deceased Employee (Type or print - first, M.I., last)	5. Employee's Address (No., street, city, state, ZIP code)	
Stephen, S., Helvenston	P.O. Box 5526 Oceanside, CA 92052	
6. Injury Is Reported Under the Following Act (Mark one)	7. Indicate Where Injury Occurred (Longshore Act only) (Mark one)	8. Sex
A <input type="checkbox"/> Longshore and Harbor Workers Compensation Act	A <input type="checkbox"/> Aboard Vessel or Over Navigable Waters	<input checked="" type="checkbox"/> M <input type="checkbox"/> F
B <input checked="" type="checkbox"/> Defense Base Act	B <input type="checkbox"/> Pier/Wharf	June 21, 1965
C <input type="checkbox"/> Nonappropriated Fund Instrumentalities Act	C <input type="checkbox"/> Dry Dock	10. Social Security No. (Required by Law)
D <input type="checkbox"/> Outer Continental Shelf Lands Act	D <input type="checkbox"/> Marina Terminal	3 0 5 7 2 5 6 4 2 1
	E <input type="checkbox"/> Building Way	11. Did Injury Cause Death? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes - If yes, skip to 16
	F <input type="checkbox"/> Marine Railway	12. Did Injury Cause Loss of Time Beyond Day or Shift of Accident? NA <input type="checkbox"/> Yes <input type="checkbox"/> No
	G <input type="checkbox"/> Other Adjoining Area	13. Date and Hour Employee First Lost Time Because of Injury Mo. Day Yr. Hour N/A AM PM
14. Did Employee Stop Work Immediately? N/A <input type="checkbox"/> Yes <input type="checkbox"/> No	15. Date and Hour Employee Returned to Work N/A	16. Was Employee Doing Usual Work When Injured/Killed? (If no, explain in Item 26) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
17. Did Injury/Death Occur on Employer's Premises? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	18. Dept. in Which Employee Normally Works(ed) Security	19. Occupation Security Services
20. Date and Hour Pay Stopped 03/31/04	21. Which Days Usually Worked Per Week? (Mark X days) <input checked="" type="checkbox"/> M <input checked="" type="checkbox"/> T <input checked="" type="checkbox"/> W <input checked="" type="checkbox"/> Th <input checked="" type="checkbox"/> F <input checked="" type="checkbox"/> S <input checked="" type="checkbox"/> X	22. Date Employer or Foreman First Knew of Accident 03/31/2004
23. Wages or Earnings (Includes overtime, allowances, etc.) a. Hourly \$ 5 b. Daily \$ 754.00 c. Weekly \$ 5,278.00 d. Yearly \$	24. Exact Place Where Accident Occurred (See Instructions on reverse). This item should specify area if accident was in maritime employment and occurred in area adjoining navigable waters. Fallujah, Iraq	25. How was Knowledge of Accident or Occupational Illness Gained? News Reports; DOD; CPA
26. Describe in full how the accident occurred (Relate the events which resulted in the injury or occupational disease. Tell what the injured was doing at the time of the accident. Tell what happened and how it happened. Name any objects or substances involved and tell how they were involved. Give full details on all factors which led or contributed to the accident.)  Deceased employee was attacked by a mob of insurgents in Fallujah. (Use additional sheet(s) if required and attach to this report)		
27. Nature of Injury (Name part of body affected - fractured left leg, bruised right thumb, etc.) If there was amputation of a member of the body, describe. N/A		
28. Has Medical Attention Been Authorized? N/A <input type="checkbox"/> Yes <input type="checkbox"/> No	29. Enter Date of Authorization N/A	30. Was First Treating Physician Chosen by Employee? N/A <input type="checkbox"/> Yes <input type="checkbox"/> No 31. Has Insurance Carrier Been Notified? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
32. Physician N/A	Address - Enter Number, Street, City, State, ZIP Code	
33. Hospital N/A		
34. Insurance Carrier Fidelity & Casualty of NY (CNA)		
35. Employer Blackwater Security Consulting LLC		
36. Nature of Employer's Business Security Consulting & Services	37. Signature of Person Authorized to Sign for Employer	
38. Official Title of Person Signing This Report President of its Manager, Blackwater Lodge & Training Center, Inc.	39. Date of This Report April 5, 2004	